REVIEW OF LEGISLATION OF YEAR 1904–1905. *Henry St. George Tucker.* 39 Am. L. Rev. 801.

RIGHT OF ALIENS UNDER AMERICAN STATUTES GIVING A CAUSE OF ACTION FOR DEATH. *Anon.* Discussing the conflict of authority as to whether the provisions of Lord Campbell's Act confer a right of action on aliens, and contending that they should. 1 (The) Law 358.

SPIRIT OF THE COMMON LAW. *Roscoe Pound.* 18 Green Bag 17.

SYSTEM OF PROBATE COURTS IN CONNECTICUT, WITH SOME SUGGESTIONS FOR ITS IMPROVEMENT, THE. *James Kingsley Blake.* 15 Yale L. J. 131.

II. BOOK REVIEWS.

STUDIES IN THE CIVIL LAW, and its Relations to the Jurisprudence of England and America, with References to the Law of our Insular Possessions. By William Wirt Howe. Second edition. Boston: Little, Brown, and Company. 1905. pp. xii, 390. 8vo.

Judge Howe begins by saying: "The American Lawyer of to-morrow should study the Civil Law for four reasons:"

(1) Because modifications of that law obtain at present in Cuba, Porto Rico, and the Philippines; in Louisiana, California, and New Mexico; in Lower Canada, Mexico, Central America, and South America. All of these are newly opened fields, as to the laws and customs in which capitalists from the older states seeking investment need advice.

(2) Because one never knows one's own system thoroughly until one places it in the parallel column and compares it line by line with another system.

(3) Because the Common Law owes large debts to Justinian, and, as he knows best the value of words who knows their Latin origin, their history, and their component parts, so he knows best the meaning and value of law who knows its foundation and is familiar with its growth.

(4) Because, by studying the old Civil Law, we lose something of our American arrogance. The discovery that not we but Gracchus first declared that a statute should contain but one object; that Paul wrestled with the subject of Contributory Negligence and evolved something very similar to the "last-clear-chance" doctrine; that the Hadley *v.* Baxendale ruling was evolved and boiled down into the terse phrases of a codal article some centuries before that case: this is striking evidence of our debt to the jurisconsults.

Judge Howe's book presents the cullings made from a broad and thoughtful reading of the history of Rome and of its laws. Beginning with Pius Aeneas, it traces the development from the individual into the family, from the family into the *gens*, and from the *gens* into the city, showing the growth of the law as co-equal with that of the population. The city was at first governed by the *Jus Civile*, a law which the original *gentes*, who at first constituted the entire free population, created to apply to themselves alone. As the city's commerce increased, and foreign merchants immigrated thither, the *Praetor Peregrinus* was appointed and the *Jus Gentium* evolved to govern them. Then, as the old families or *gentes* gradually died away and were replaced by strangers, so the *Jus Civile* gradually died away and was replaced by the *Jus Gentium*, which the author traces into the Amalfian Tables, and the Consolato del Mare, and then through Oleron, Wisby, and the Hanseatic Code into the famous Marine Ordinances of Louis XIV and the Code du Commerce of Napoleon.

A discussion of the history of the Civil Law in England is followed by an account of its development to date in France, Germany, and the Americas. Our new insular possessions are governed by the Codes of Spain, which consist, at present, of a Civil Code enacted in 1889, a Commercial Code enacted in 1886, and a Code of Procedure enacted in 1881.

Coming from history and generalities to questions of substantive law, Judge Howe deals rapidly with Persons, Property, Contracts, Successions, and Remedies, stress being laid, as it should be laid, upon Marital Rights, Contracts, and Descent and Distribution. It is to be regretted that the author, who is

peculiarly fitted for such a labor, did not, in the pursuit of this discussion, make use of parallel columns. These subjects are those regarding which the common law attorney is most likely to require information, and had this book laid down the Common Law on these subjects, point by point, and beside it placed the Civil Law on the same subject, point by point, and supplemented these comparisons by notes showing the importance of the differences, it would have rendered a very valuable service to the profession. As it is, the differences are in some cases pointed out, in others left to be discovered by the reader. Only a few of the many that are suggestive and important can be remarked upon here. A contract is called by its proper name, to wit, a conventional obligation; an offer and acceptance, both duly communicated, are essential in both systems. At Common Law a gratuitous contract must be under seal, while at Civil Law a donation *inter vivos* must be by notarial act. In England the doctrine of consideration arose gradually and silently, and continued to grow, though repudiated by Lord Mansfield; while in Louisiana, though the Code of 1808 did not consider a consideration necessary to support a parol promise, and Eustis, C. J., expressly repudiated the doctrine of consideration, it is still a healthy, hearty doctrine at present. Minors and infants are both without capacity to contract at Civil Law, but minors have the advantage over infants in that they can rid themselves of this disability in some cases by what is called emancipation. Duress of goods is expressly recognized as vitiating consent in Louisiana, a rule which does not seem to obtain at Common Law. (Anson, Contracts, 214.) Under Descent and Distribution or "Succession," attention is called to the fact that in both systems of law an intestate succession falls to the descendants, or, in default of them, to the ascendants, or collaterals, in substantial accordance with the rule laid down by Justinian. But the Civil Law limits the power of the testator by providing that a man leaving three or more children can dispose of only one-third of his estate. This provision, if enforced in the common law states, would in large measure prevent the amassing of colossal fortunes in the hands of a few by compelling their distribution at the passing away of each generation.

These differences and the differences between prescription and the statute of limitations; the law of Privileges; the conception of a partnership as an entity; the absence of distinctions between realty and personalty in Descent and Distribution; the differences in the law of Mortgages, and the radically different land tenure; the theory of immovables by destination, and the prohibition against trust estates, while they are in some cases referred to, are not collated and presented in concise form readily accessible for future use. In this respect the author has wasted an opportunity. For practical utility, therefore, the value of the book is small. It is a book of a student and not of a practitioner. Yet in that very fact lies much of its charm. The style is quiet and uninterrupted by lists of cases stabbed into the text in support of each proposition. The book is an essay breathing the calm of the library on a still night rather than a brief or a text-book exhaling the bustle of the office. J. B. M.

CENTRALIZATION AND THE LAW. SCIENTIFIC LEGAL EDUCATION. An Illustration. With an Introduction by Melville M. Bigelow. Boston. Little, Brown and Company. 1906. pp. xvii, 296. 8vo.

This book is a mosaic; composed principally of lectures recently delivered at the Boston University Law School by Messrs. Brooks Adams, Melville M. Bigelow, Edward A. Harriman, and Henry S. Haines. By far the larger part is contributed by Mr. Adams and Professor Bigelow. Whether the reader adopts or rejects the final conclusions of the writers, he must admit that their discussions are, as Sir Henry Maine said of the Analytical Jurists, useful "for the purpose of clearing the head." They present important issues with great distinctness. Unique, radical, stimulating, — these are terms which may well be applied to large portions of this book.